

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Implementation of the)	
Cable Television Consumer)	
Protection and Competition)	MM Docket No. 92-263
Act of 1992)	
)	
Consumer Protection and)	
Customer Service)	

REPLY COMMENTS OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI") hereby files its reply comments in the above-captioned proceeding.

I. INTRODUCTION

The comments in this proceeding reflect a significant lack of consensus on the subjects which Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act")¹ obligates the Commission to address. There is disagreement over both the proper scope and content of the customer service standards the Commission must promulgate under

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992) (For ease of reference, citations herein are made to the Communications Act of 1934, as amended by the Act).

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Section 632(b). There is disagreement over how the standards the Commission adopts are to be implemented by franchising authorities. And there is disagreement over the effect of the standards on existing customer service requirements and those that a franchise authority might want to unilaterally impose in the future. TCI believes this disagreement is a persuasive reason for the Commission to adopt the well-known and widely implemented NCTA Standards.

II. THE PROPER SCOPE AND CONTENT OF THE CUSTOMER SERVICE STANDARDS TO BE ESTABLISHED BY THE COMMISSION UNDER SECTION 632(b) ARE REFLECTED IN THE NCTA STANDARDS

It is not surprising that the commenters differ on the preferred scope and content of the Commission's customer service standards. But the range of views is surprising; if not daunting. At one end of the continuum some commenters advocated standards which are less vigorous than the NCTA Standards.² At the other end of the continuum are franchising authorities urging the Commission to go far beyond the NCTA Standards both in terms of substantive customer service requirements and the scope of the

² See e.g., Comments of Coalition of Small System Operators at 3; Comments of Consortium of Small Cable System Operators at 5 (smaller systems cannot meet all of the NCTA Standards); Comments of the Northwest Municipal Cable Council at 3 (certain requirements under the NCTA Standards are too stringent).

issues addressed.³ Lodged firmly in the center of this continuum are TCI and other commenters suggesting that the Commission adopt the NCTA Standards in their existing form or with changes in the nature of definitional clarifications or minor modifications.⁴

TCI remains convinced that the Commission's regulations should adopt the centrist view reflected in our initial comments. Given the industry-wide implementation of the NCTA Standards we see no compelling reason for the Commission to adopt less stringent ones.

TCI does not believe it practicable for the Commission's standards to be performance based.⁵ Mandating a subjective level of customer satisfaction rather than an objective level of customer service has the potential for producing some very anomalous results. A subscriber's perception of customer service quality is subjective and difficult to definitively measure. Also, the varying nature and influence of externalities could

³ See e.g., Comments of City of Dallas at 4-7; Comments of Greater Metro Cable Consortium at 2; Comments of Metropolitan Area Communications Commission at 2-3; Comments of National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors, and the National Association of Counties at 20-21 ("NATOA et al.").

⁴ See e.g., Comments of Tele-Communications, Inc. at 10-14; Comments of Cole, Raywid & Braverman at 7; Comments of National Cable Television Association at 19-20; Comments of Time-Warner Entertainment Company, L.P. at 4-8.

⁵ See Comments of Continental Cablevision, Inc. at 8-15.

result in fluctuations in the measured level of customer satisfaction, while actual performance remains constant. TCI prefers the objective, "content standards" which form the backbone of the NCTA Standards.

Some commenters advocated that the Commission standards (i) address myriad subjects not in the NCTA Standards and (ii) contain more stringent numerical benchmarks than those contained in the NCTA Standards. That the motivation for these comments is understandable and well-meaning should not blind the Commission to the fact that they are based on fallacious premises. The first fallacious premise is that "tougher" standards are necessarily better standards. Like the proverbial kid in a candy store, those urging extremely stringent customer service requirements are rummaging through the regulatory shelves and giving in to their immediate impulses with little thought to the consequences. And those consequences are higher rates for subscribers without a measurable increase in customer service satisfaction. Given that subscribers bear the financial burden of customer service compliance costs, the Commission should ignore such impulses and focus on the real question at hand -- what is the minimum mandated level of customer service requirements that will provide an acceptable level of customer satisfaction.

The second fallacy of those arguing for standards that go beyond the NCTA's is that they fail to show that the NCTA

Standards as implemented are producing a substandard level of customer service. Instead, those advocating harsher standards would have the Commission implement them solely on evidence of customer service shortcomings that predated widespread implementation of the NCTA Standards and anecdotal, individualized instances of customer service problems.⁶ The Commission should decline this invitation and instead adopt the NCTA Standards with the definitional clarifications set forth in TCI's initial comments.

III. THE COMMISSION'S CUSTOMER SERVICE STANDARDS ARE NOT SELF-EXECUTING UNDER THE ACT

Several commenters assert that the standards to be established by the Commission under Section 632(b) are self-executing.⁷ These commenters do not argue from the language of the Act but instead (1) point to the totally illusory "burden" on small communities of enacting the Commission's standards,⁸ (2) argue that recognition of the fact that the Commission standards are not self-executing would be tantamount to the Commission

⁶ See e.g., Comments of NATOA et al. at 5-6.

⁷ See, e.g., Comments of NATOA, et al. at 8-10; Comments of the New York State Commission on Cable Television at 3-6 ("NYSCCT"); Comments of West Michigan Communities at 12-14; Comments of the Attorneys General of Pennsylvania, Massachusetts, New York, Ohio and Texas at 2-6 ("Attorneys General").

⁸ Comments of West Michigan Communities at 13.

"delay[ing]...their implementation by local franchise authorities,"⁹ and (3) confuse the issue of local adoption of the Commission's standards with amending the franchise.¹⁰

None of these commenters sufficiently address the logical, if not constitutional, difficulties of "enforcing" standards which they have neither adopted nor prescribed penalties for violating. The comments of the New York State Commission on Cable Television ("NYSCCT") at least acknowledge these problems.¹¹ But the NYSCCT's Solomonic "solution" of requiring franchise authority adoption of the Commission standards for some purposes but not others is unworkable and ignores both the language of the Act and the relevant legislative history.¹²

IV. A FRANCHISING AUTHORITY MAY EXCEED THE COMMISSION CUSTOMER SERVICE STANDARDS ONLY IN CERTAIN LIMITED CIRCUMSTANCES

It is not surprising that several commenters tempt the Commission to take the position that its standards are minimum ones that a franchising authority can choose to adopt, ignore or

⁹ See Comments of Attorneys General at 3.

¹⁰ Comments of NYSCCT at 4, 6.

¹¹ Id. at 6-7.

¹² See H.R. Rep. No. 628, 102nd Cong., 2d Sess. 105 (1992); H.R. Conf. Rep. No. 862, 102nd Cong., 2d Sess. 78 (1992).

buttress as it sees fit.¹³ None of these commenters attempt to reconcile their position with Section 632(b) or the first sentence of Section 632(c)(2). Instead, they opt to read Section 632(c)(2) as if it were written in invisible ink. Congress did not intend such a result and to avoid it the Commission must establish its standards as maximum ones.

This result is compelled by the language of the Act and is logical as a matter of public policy. Allowing thousands of franchising authorities to adopt thousands of different customer standards would retard customer service rather than improve it. Further, it would impose costs (ultimately borne by subscribers) that could be avoided by adopting a uniform maximum standard which takes advantage of the economies of scale inherent in such uniformity.

Several commenters take another route in their attempt to read the first sentence of Section 632(c)(2) out of the Act. They do this by rejecting the Commission's reading of Section 632(c)(1) as applying to laws of general applicability.¹⁴ The Commission should not abandon its interpretation of Section 632(c)(1). To do so would nullify Section 632(b). It would also return the industry to the days prior to the 1984 Cable Act when

¹³ See, e.g., Comments of Municipal Franchising Authorities at 3-6; Comments of USSBA at 3; Comments of Attorneys General at 2; Comments of NYSCCT at 3-6.

¹⁴ See West Michigan Communities Comments at 5-12; City of Kalamazoo, Michigan, Comments at 2-7.

cable operators were unfairly singled out and discriminated against by local jurisdictions.

V. CONCLUSION

For these reasons, TCI urges that the Commission adopt rules to implement Section 8 of the Act consistent with the proposals contained herein and in its initial comments.

Respectfully submitted,
TELE-COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Michael H. Hammer", is written over a horizontal line.

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